

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MARIO MARTINEZ,

Plaintiff,

- against -

DEWALT INDUSTRIAL TOOL CO., et al.,

Defendants.

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**REPORT AND
RECOMMENDATION**

11-CV-0655 (RJD) (JO)

JAMES ORENSTEIN, Magistrate Judge:

On February 7, 2011, defendant Probuild Company LLC ("Probuild") purported to remove this action to this court on the basis of diversity jurisdiction. Docket Entry ("DE") 1. Plaintiff Martinez contested the propriety of the removal, and Probuild itself later reconsidered its decision and agreed that the case should be remanded for a variety of reasons. *See* DE 5; DE 13. However, defendant Black & Decker (U.S.) ("BDUS"), which first appeared in the case only after the removal, took the position that the case could not and should not properly be remanded. *See* DE 6; DE 14; DE 16; DE 27. After considerable efforts by the parties to determine the sufficiency of the removal, as reflected in several docket entries, BDUS reports that it is now satisfied that there was no complete diversity of citizenship at the time the lawsuit was filed, and that the case should therefore be remanded. *See* DE 31. In light of the parties' unanimous agreement that this court lacks subject matter jurisdiction, I respectfully recommend that the court remand this case to the Supreme Court of the State of New York, Queens County.

Any objections to this Report and Recommendation must be filed no later than July 25, 2011. Failure to file objections within this period designating the particular issues to be reviewed waives the right to appeal the district court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P.

72(b)(2); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: Brooklyn, New York
July 8, 2011

/s/ James Orenstein
JAMES ORENSTEIN
U.S. Magistrate Judge